

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 548 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

=====

1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

-----

HEIRS OF RATILAL PITAMBER OZA

Versus

ARVINDKUMAR AMBALAL SHUKLA

-----

Appearance:

MR MANOJ POPAT for Petitioners

MR DF AMIN for Respondent No. 1

-----

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 05/07/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rents,  
Hotel and Lodging House Rates Control Act, 1947 at the  
instance of the original plaintiff - landlord, who had  
sued the respondent - defendant - tenant for a decree of  
eviction under the provisions of the Bombay Rent Act.

2. The landlord had sued the tenant for a decree of eviction on the ground that the tenant had acquired suitable alternative residential accommodation within the meaning of section 13[1][l] of the Bombay Rent Act, that the tenant was guilty of illegal sub-letting, that the tenant had not used the suit premises for a period of more than six months prior to the suit for the purposes for which they were let (within the meaning of section 13[1][k] of the Bombay Rent Act), and that the landlord required the suit premises reasonably and bonafide for their personal requirement (within the meaning of section 13[1][g] of the Bombay Rent Act).

3. The trial Court after appreciating the evidentiary material on record, found on all the grounds against the landlord and dismissed the suit for eviction.

4. The landlord being aggrieved by the dismissal of his suit preferred an appeal u/s 29[1] of the Bombay Rent Act to the District Court. The lower appellate Court, after re-appreciating the evidence on record, dismissed the appeal by confirming all the findings and conclusions recorded by the trial Court.

4.1 Hence, the present revision at the instance of the landlord.

5. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

6. The fundamental dispute between the parties and the crux of the matter which is required to be

considered, is as to whether the tenancy rights in respect of the lease premises vested in the original defendant in his individual capacity, or whether the tenancy was in respect of the joint family of the original defendant. In this context, it requires to be noted that the landlord's contention was that the suit property was let to the original defendant in his individual capacity, and that therefore, it was a personal contract between the landlord and the original defendant, as against which the original defendant had contended that he is a member of the joint family consisting of himself, his brother and his mother, and that when he had taken the property on lease in the year 1956, it was for the use of the joint family, and since the date of the lease, his brother and his mother had been residing in the suit property together with him. It was only subsequently that the original defendant was transferred from Jamnagar and therefore, he was required to shift out of the rented premises with his family, however leaving his brother who continued to reside in the lease premises. The original defendant - tenant has deposed at exh.27, that the property was taken on lease in the year 1956, and at that point of time, there were nine members in his family including his brother Chandrakant, who was unmarried at that point of time. He further stated that it was only thereafter in the year 1959 that he was transferred from Jamnagar, and therefore, he shifted away from the rented premises with his family, leaving behind his brother Chandrakant who continued to reside in the rented premisses. He has further deposed that his brother Chandrakant was, when the property was taken on lease in the year 1956, studying in classes run by Saurashtra Balvikas Samiti, and that thereafter, since 1957, Chandrakant is serving in I.N.S. Valsura, Jamnagar. The original tenant has further deposed that he is a member of the joint Hindu family consisting himself, his brother Chandrakant and his mother, who were all staying with him when the property was taken on lease. This oral evidence of the original defendant is not shaken in the cross-examination.

6.1 Furthermore, there is independent evidence in the form of documentary evidence, coupled with the evidence of his brother Chandrakant at exh.33. Chandrakant has also deposed at exh.33 that he is a member of the joint family consisting of himself and his elder brother (original defendant), and that he had come to reside in the rented premises together with his elder brother in the year 1956 when the property was first taken on lease. He has further deposed that at the relevant point of

time, he was studying and since 1957, he is serving in I.N.S. Valsura.

6.2 There is further independent evidence of Mukundrai Oza at exh.36. This witness is a neighbour and is therefore a disinterested witness who has deposed that, since the year 1956, both the defendant and his brother Chandrakant have been residing in the suit property.

6.3 There is also the further evidence of another independent witness Jagubhai Naranbhai at exh.38, who has deposed that the brother of the original defendant - Chandrakant was studying in his institution in the year 1956. This witness has also produced a copy of the certificate at mark 26/1. Since this certificate has not been proved according to rules of evidence, it has not been exhibited and therefore, no serious note of it can be taken as a piece of evidence. However, the lower appellate Court has merely looked into it for the purpose of examining the credibility of the witness who produced this certificate, and has concluded that this witness has not come to give false evidence before the Court.

6.4 There is further corroboration available from the certificate at exh.34 which is part of the service record of Chandrakant (while in service with I.N.S. Valsura, Jamnagar), from which it can be seen that Chandrakant has given his permanent address as the suit property. Now this service record was created in the year 1957, when there was no dispute between the parties, and therefore, this document cannot be faulted.

6.5 Both the Courts below were therefore justified in concluding that although the rent receipts were issued in the name of the original defendant, the property in fact had been taken on lease by the joint family, and that therefore, when the elder brother moved out of the tenanted premises, leaving behind his younger brother, then the same would not amount to illegal sub-letting.

7. Another aspect which requires to be considered is the well settled position of law, which has not been considered by the two Courts below, perhaps because the attention of the Courts was not drawn to this aspect. It is well settled since the earlier decision of this Court in the case of Bhagawati Spinning & Weaving Works v/s Ahmedabad New Cotton Mills Co. Ltd. [20 GLR Page 932]. It has been held on the interpretation of section 13[1][e] of the Bombay Rent Act, that there cannot be any doubt about the proposition that there cannot be a

sub-tenancy between a tenant and a sub-tenant except for valuable consideration. The Court further held that it is normally difficult for the landlord to show that there was a valuable consideration in the transaction between the tenant and a sub-tenant, and that therefore, in a given case, there may not be express proof of valuable consideration. However, where such valuable consideration cannot be proved expressly, it can certainly be inferred from other circumstances or by way of proof by inference. However, on the facts and circumstances of the case, once the principle is accepted that there cannot be sub-letting without proof of valuable consideration, there cannot possibly be any inference from the facts of the present case that an elder brother would derive or extract valuable consideration from his younger brother, particularly when they have been residing together since the inception of the tenancy.

8. In light of this evidence on record, it must be found that the two Courts below were justified in holding that, on the facts and circumstances of the case, it could not be held that the original defendant was guilty of illegal sub-letting.

8.1 It necessarily follows from the same set of evidence that the original defendant could not be said not to have used the property for the purpose for which it was used for six months prior to the suit, merely because he was transferred away and left the suit premises leaving his younger brother in the premises. In order to establish a case u/s 13[1][k] of the Bombay Rent Act, the landlord would be required to prove that even the brother Chandrakant had not made use of the property for more than six months prior to the suit. This has not even been attempted to be proved by the landlord.

9. This takes us to the last consideration as to whether the landlords have succeeded in establishing their reasonably and bonafide personal requirement.

9.1 First of all, both the Courts below have found on the facts of the case that the landlords have failed to establish this requirement within the meaning of section 13[1][g] of the Bombay Rent Act.

9.2 Coupled with the concurrent findings of fact recorded by the two Courts, note is required to be taken of the varying and vacillating stand taken by the plaintiffs - landlords so far as their personal requirement is concerned. In the statutory notice, the

landlords have averred that they require the suit premises for the use of their family. This ground is totally abandoned in the suit plaint. Para 4 of the plaint specifically asserts that the premises are required by the landlords for the purpose of expansion of their business. As against this, a further turn around has been made by the plaintiff himself in his deposition where he specifically denies that he wants to develop his business of bookbinding and tailoring, and asserts that he does not require the suit property for this purpose. Ultimately in the evidence, the plaintiff only relies upon the requirement of the family. Thus, independent of the factual finding that the landlords do not reasonably require the suit premises for their personal requirement, the Courts below have recorded an independent finding that the requirement is not bonafide.

10. Therefore, on the total consideration of the material on record, I am satisfied that the judgement and decree of the two Courts below are eminently sustainable and do not require any interference. This revision is therefore required to be dismissed and is accordingly dismissed. Consequently, rule is discharged with costs.

\*\*\*\*\*

parmar\*